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BOARD OF EQUALIZATION TO AUDIT BARNES & NOBLE.COM

The State Board of Equalization, California's elected state tax commission, by a 3-2 vote at its April 23, 2003 meeting, directed its staff to conduct a full-scale nexus audit of the California activities of Barnes & Noble.Com, a "dot com" retailer which sells Barnes and Noble products online and used California Barnes & Noble stores to distribute discount coupons in 1999. The Board also directed Barnes & Noble.Com to fully cooperate with the nexus audit.

"To the average customer, there's not a dime's worth of difference between something purchased at a Barnes & Noble store and at Barnes & Noble.Com", said Carole Migden, Chairwoman of the Board of Equalization. "Our decision sends a message to national retailers: do not try to use the Internet as a tax haven for your California stores that constitute one eighth of our great nation's retail market. If the end result of your Internet commerce is a physical presence in California, you're going to be treated like every other store on every other Main Street or mall in California."

Chairwoman Migden notes that Barnes & Noble came to the Board for a second hearing, even though the Board had already ruled that Barnes & Noble.Com was required to collect use tax on California sales. In a September 12, 2002 decision, the Board had already determined that the use by Barnes & Noble.Com of Barnes & Noble "bricks and mortars" stores for distribution of 20% discount coupons for online purchases from the "dot com" meant that the "dot com" was using Barnes & Noble stores as "agents" or "representatives" in California. These terms are used in the California Sales and Use Tax Law, meaning that Barnes & Noble.Com was required to collect tax on all items sold in California from November 15, 1999 through and including January 31, 2000; January 31, 2000 was the last date the discount coupons could be redeemed.

In its April 23, 2003 decision, the Board reaffirmed the September 2002 decision and additionally directed its audit staff to conduct a full nexus investigation of the activities of Barnes & Noble.Com in California both prior to November 15, 1999 and after January 31, 2000. Under the California Sales and Use Tax Law, Barnes & Noble.Com will be liable for California sales and use tax on all sales made to California residents during any period of time in which it had an agent or representative physically present in California. The use of the Barnes & Noble stores to distribute discount coupons is but one example of physical presence under the law. Other possible examples include, but are not limited to: using the stores to take returns; the presence of travelling representatives in California; and the presence of Internet kiosks in California.

The April 23 Barnes & Noble.Com decision is the third decision by the Board addressing Internet commerce. In a 2001 decision, the Board determined that Borders Online, the dot com subsidiary of Borders, was required to collect tax on all sales into California because it used the Borders stores in California to give customers cash returns for products purchased through Borders Online.

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